

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NICHOLAS & TOMASEVIC, LLP
Craig M. Nicholas (SBN 178444)
Shaun Markley (SBN 291785)
Jake Schulte (SBN 293888)
225 Broadway, 19th Floor
San Diego, California 92101
Tel: (619) 325-0492
Fax: (619) 325-0496
Email: craig@nicholaslaw.org
Email: smarkley@nicholaslaw.org
Email: jschulte@nicholaslaw.org

GLICK LAW GROUP, PC
Noam Glick (SBN 251582)
225 Broadway, Suite 2100
San Diego, California 92101
Tel: (619) 382-3400
Fax: (619) 615-2193
Email: noam@glicklawgroup.com

Attorneys for Plaintiff Kim Embry

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

KIM EMBRY, an individual

Plaintiff,

v.

TARGET CORPORATION., a Minnesota
corporation and DOES 1 through 100,
inclusive,

Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

FILED BY FAX
ALAMEDA COUNTY
June 18, 2019
CLERK OF
THE SUPERIOR COURT
By Shabra Iyamu, Deputy
CASE NUMBER:
HG19023387

I. INTRODUCTION

1
2 1. This Complaint is a representative action brought by Plaintiff in the public interest of
3 the citizens of the State of California (“the People”). Plaintiff seeks to remedy Target Corporation’s
4 (“Defendant”) failure to inform the People of exposure to Acrylamide, a known carcinogen. Defendant
5 exposes consumers to Acrylamide by manufacturing, importing, selling, and/or distributing Market
6 Pantry Vanilla Sugar Wafers (“Product” or “Products”). Defendant knew and intended that customers
7 will ingest Products containing Acrylamide.

8 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California
9 Health and Safety Code, section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing
10 business shall knowingly and intentionally expose any individual to a chemical known to the state to
11 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
12 individual. . . .” (Health & Safety Code, § 25249.6.)

13 3. California identified and listed Acrylamide as a chemical known to cause cancer as early
14 as January 1, 1990, and as a chemical known to cause developmental/reproductive toxicity in February
15 of 2011.

16 4. Defendant failed to sufficiently warn consumers and individuals in California about
17 potential exposure to Acrylamide in connection with their manufacture, import, sale, or distribution of
18 the Products. This is a violation of Proposition 65.

19 5. Plaintiff seeks injunctive relief compelling Defendant to sufficiently warn consumers in
20 California before exposing them to Acrylamide in Products. (Health & Safety Code, § 25249.7(a).)
21 Plaintiff also seeks civil penalties against Defendant for their violations of Proposition 65 along with
22 attorney’s fees and costs. (Health & Safety Code, § 25249.7(b).)

II. PARTIES

23
24
25 6. Plaintiff KIM EMBRY is a citizen of the State of California dedicated to protecting the
26 health of California citizens through the elimination or reduction of toxic exposure from consumer
27 products. She brings this action in the public interest pursuant to Health and Safety Code, section
28 25249.7.

1 7. Defendant TARGET CORPORATION., (“Target”), is a corporation organized and
2 existing under the laws of Minnesota. Target is registered to do business in California, and does business
3 in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Target
4 manufactures, imports, sells, or distributes Products in California and Alameda County, including, for
5 example Market Pantry Vanilla Sugar Wafers.

6 8. The true names of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff.
7 Plaintiff sues these Defendants by fictitious names. Plaintiff is informed and believes, and on that basis
8 alleges, that each fictitiously named defendant is responsible for the acts and occurrences herein
9 alleged. When ascertained, their true names shall be reflected in an amended complaint.

10 III. VENUE AND JURISDICTION

11
12 9. California Constitution Article VI, Section 10 grants the Superior Court original
13 jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code
14 statute upon which this action is based does not give jurisdiction to any other court. As such, this Court
15 has jurisdiction.

16 10. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
17 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
18 County. Defendants conducted and continue to conduct business in this County as it relates to Products.

19 11. Defendants have sufficient minimum contacts in the State of California or otherwise
20 purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would
21 be consistent with traditional notions of fair play and substantial justice.

22 IV. CAUSES OF ACTION

23 FIRST CAUSE OF ACTION 24 (Violation of Proposition 65 – Against Defendant)

25 12. Plaintiff incorporates by reference each and every allegation contained above.

26 13. Proposition 65 mandates that citizens be informed about exposures to chemicals that
27 cause cancer, birth defects, and other reproductive harm.
28

1 14. Defendant manufactured, imported, sold, and/or distributed Products containing
2 Acrylamide in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and
3 believes such violations have continued after receipt of the Notice (defined *infra*) and will continue to
4 occur into the future.

5 15. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to
6 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
7 to Acrylamide through reasonably foreseeable use of the Products.

8 16. Products expose individuals to Acrylamide through direct ingestion. This exposure is a
9 natural and foreseeable consequence of Defendant placing Products into the stream of commerce. As
10 such, Defendant intend that consumers would ingest Products, exposing them to Acrylamide.

11 17. Defendant knew or should have known that the Products contained Acrylamide and
12 exposed individuals to Acrylamide in the ways provided above. The Notice informed Defendant of the
13 presence of Acrylamide in the Products. Likewise, media coverage concerning Acrylamide and related
14 chemicals in consumer products provided constructive notice to Defendant.

15 18. Defendant's actions in this regard were deliberate and not accidental.

16 19. More than sixty days prior to naming Defendant in this lawsuit, Plaintiff issued a 60-
17 Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
18 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
19 The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in
20 California of the health hazards associated with exposures to Acrylamide contained in the Products.

21 20. The appropriate public enforcement agencies provided with the Notice failed to
22 commence and diligently prosecute a cause of action against Defendant.

23 21. Individuals exposed to Acrylamide contained in the Products through direct ingestion
24 resulting from reasonably foreseeable use of the Products have suffered and continue to suffer
25 irreparable harm. There is no other plain, speedy, or adequate remedy at law.

26 22. Defendant is liable for a maximum civil penalty of \$2,500 per day for each violation of
27 Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
28 appropriate pursuant to Health and Safety Code, section 25249.7(a).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER FOR RELIEF


Wherefore, Plaintiff prays for judgment against Defendant as follows:

- 1. Civil penalties in the amount of \$2,500 per day for each violation;
- 2. A preliminary and permanent injunction against Defendant from manufacturing, importing, selling, and/or distributing Products in California without providing a clear and reasonable warning as required by Proposition 65 and related Regulations;
- 3. Reasonable attorney's fees and costs of suit; and
- 4. Such other and further relief as may be just and proper.

Respectfully submitted:

Dated: June 18, 2019

NICHOLAS & TOMASEVIC, LLP

By: 

 Jake Schulte
 Attorney for Plaintiff